

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§114.620, 114.622, 114.623, 114.644, 114.650 - 114.653, and 114.680 - 114.682; and the repeal of §§114.648, 114.658, 114.660 - 114.662, and 114.670 - 114.672.

If adopted, the amendments to §§114.620, 114.622, 114.623, 114.650 - 114.653, and 114.680 - 114.682 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules implementing the Diesel Emissions Reduction Incentive Program (DERIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter C; the Texas Clean School Bus Program (TCSBP) established under THSC, Chapter 390; the Texas Clean Fleet Program (TCFP) established under THSC, Chapter 392; and the Seaport and Rail Yard Emissions Reduction Program, established under THSC, Chapter 386, Subchapter D-1. The purpose of this rulemaking is also to repeal existing rules that established prioritization criteria for the Alternative Fueling Facilities Program (AFFP) established under THSC, Chapter 393; and the Texas Natural Gas Vehicle Grant Program (TNGVGP) established under THSC, Chapter 394.

The incentive programs implemented by these rules are part of the Texas Emissions Reduction Plan (TERP) established under THSC, Chapter 386, and administered by the commission. The enabling legislation creating the TERP was enacted under Senate Bill (SB) 5, 77th Texas Legislature, 2001. The TERP was created to provide financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment, with the DERIP as the primary incentive program. In subsequent years, additional programs were added to the TERP to provide incentives to install retrofit devices on school buses to reduce exposure of school children to diesel exhaust, programs to provide incentives to replace diesel vehicles with alternative fuel vehicles, programs to provide incentives for the construction of fueling facilities to provide alternative fuel, and a program to replace drayage trucks at seaports and rail yards with newer, cleaner models. The chapters in the THSC authorizing these programs and the TERP in general were scheduled to expire August 31, 2019.

SB 1731, 85th Texas Legislature, 2017, extended the expiration dates of these programs and revised some of the program criteria and processes. Instead of establishing a specific new expiration date, SB 1731 extended the programs until the last day of the state fiscal biennium during which the commission publishes in the *Texas Register* notification that the EPA has published in the *Federal Register* that areas in the state are designated attainment or unclassifiable/attainment for National Ambient Air Quality Standards (NAAQS) for ozone, or the EPA has approved a redesignation substitute making a finding of attainment for the area, and judicial

reviews of the EPA actions and rules have been completed and upheld the findings or the limitations period to seek judicial review has expired. The proposed rulemaking would amend the TCSBP and TCFP rules to remove the rule expiration dates.

SB 1731 amended the DERIP criteria under THSC, Chapter 386, Subchapter C, to revise the definition of a small business to include a small business that owns and operates not more than five vehicles and to remove model-year restrictions on vehicles and equipment that may be owned by the small business. In addition, the requirement that the executive director shall waive certain eligibility requirements on a finding of good cause was changed to state that the executive director may waive the requirements. Also, SB 1731 added clarifying language to the small business incentive requirements to specify that the commission may implement the small business incentives either through a separate small business grant program or through special consideration to small businesses when implementing another program under THSC, Chapter 386, Subchapter C. The proposed rulemaking would make corresponding changes to the DERIP rules.

SB 1731 amended the criteria for the TCSBP under THSC, Chapter 390, to add replacement of an existing school bus with a new school bus as an eligible project category. The changes included model-year requirements for the school bus being replaced and the school bus being purchased, as well as ownership and operational requirements. The school bus being purchased must be operated on a regular daily

route to and from a school during the school year for at least five years after a start date established by the commission. SB 1731 also established a requirement that the school bus being replaced must be rendered permanently inoperable or be permanently removed from the state to a destination outside of the United States, Canada, or the United Mexican States. The proposed rulemaking would incorporate into rule provisions the changes made by SB 1731.

SB 1731 removed the definition of the "clean transportation triangle" in THSC, §394.010, and added the definition of the "clean transportation zone" in THSC, §393.001. The new clean transportation zone includes additional counties that were not part of the previous clean transportation triangle. The references to the clean transportation triangle in the special provisions under the TCFP requirements in THSC, Chapter 392, pertaining to vehicles used for agricultural product transportation were also amended to refer to the clean transportation zone. SB 1731 also amended the criteria for the TCFP to change the requirement that a grant application include the replacement of at least 20 vehicles to require that at least 10 vehicles be included in the application. In addition, the provisions requiring that a vehicle qualifying for an incentive be certified to current federal emission standards was changed to require that the vehicle be certified to the appropriate current federal emissions standards as determined by the commission. The requirement that the executive director shall waive certain eligibility requirements on a finding of good cause was changed to state that

the executive director may waive the requirements. The proposed rulemaking would make corresponding changes to the TCFP rules.

SB 1731 also removed the rulemaking requirements for the AFFP under THSC, Chapter 393, and the TNGVGP under THSC, Chapter 394. The rules for these programs only outline some, and not all, possible prioritization criteria for selecting projects under those programs and do not include the more detailed program implementation processes and criteria. Because the rules are no longer required and because the prioritization criteria in the rules provide only general information and not specific direction on implementation of these programs, the commission has determined that the rules are not needed in order to effectively implement the programs. The program requirements will be implemented through the grant solicitation and contracting documents. Therefore, the commission proposes to repeal the AFFP program rules under §§114.660 - 114.662 and the TNGVGP rules under §§114.670 - 114.672.

Section by Section Discussion

Subchapter K, Division 3: Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles

§114.620, Definitions

The commission proposes to amend the definition of a "Small business" under §114.620(11). The proposed amendment would change the requirement that in order to qualify as a small business a person may own no more than two vehicles, to instead

require that a person may own no more than five vehicles. The engine model-year requirements for at least one of the on-road or non-road diesels owned and operated by the small business would be removed. In addition, the requirement that a person must have owned the on-road or non-road diesel for more than one year would be changed to require that a person must have owned the on-road or non-road diesel for more than two years.

§114.622, Incentive Program Requirements

The commission proposes to amend the requirement under §114.622(h) that the executive director shall waive certain eligibility requirements established under subsections (b) - (f) on a finding of good cause, to state the executive director may waive certain eligibility requirements.

§114.623, Small Business Incentives

The commission proposes to amend §114.623(a) to add clarifying language specifying that the small business incentives provided for under the rules may be implemented either through a separate small business grant program or through special consideration to small businesses when implementing another program established under Division 3.

Subchapter K, Division 4: Texas Clean School Bus Program

§114.644, Clean School Bus Program Requirements

The commission proposes §114.644(a)(6) to include the replacement of a pre-2007 model year school bus to the list of eligible projects under the program.

The commission proposes to amend §114.644(d) to add the phrase "during the school year" to the requirement that a school bus proposed for retrofit must be used on a regular, daily route to and from a school, to clarify that the requirement only applies during the school year.

The commission proposes to amend §114.644(e) to remove the existing provisions for a proposed project that included a replacement of equipment or a repower under this subsection. These provisions required the old equipment or engine be recycled, scrapped, or otherwise permanently removed from the state. The proposed amendment would add requirements for a school bus proposed for replacement.

Under the proposed requirements, a school bus proposed for replacement must: be a model year 2006 or earlier; have been owned or operated by the applicant for at least two years before submission of the grant application; be in good operational condition; and be currently used on a regular daily route to and from a school during the school year.

The commission proposes §114.644(f) to require that a school bus proposed for purchase to replace a pre-2007 model year school bus be of the current model year or

the year before the current model year. Current subsection (f) is re-lettered as proposed subsection (i).

The commission proposes §114.644(g) to require that the replacement school bus must be purchased and the grant recipient must agree to own and operate the school bus on a regular, daily route to and from a school during the school year for at least five years after a start date established by the commission, which is to be based on the date the commission accepts documentation of disposition of the school bus being replaced. Current subsection (g) is re-lettered as proposed subsection (j).

The commission proposes §114.644(h) to require that a school bus replaced under the program be rendered permanently inoperable or be permanently removed from the state to a destination outside of the United States, Canada, or the United Mexican States. Current subsection (h) is re-lettered as proposed subsection (k).

Existing §114.644(i) and (j) would also be re-lettered as proposed subsections (l) and (m) to account for the added subsections.

Subchapter K, Division 4: Texas Clean School Bus Program

§114.648, Expiration

The commission proposes to repeal §114.648, which established an expiration date for Division 4 of August 31, 2019, unless the program were extended or reauthorized by the Texas Legislature.

Subchapter K, Division 5: Texas Clean Fleet Program

§114.650, Definitions

The commission proposes to amend §114.650(1)(C) to change the reference from "clean transportation triangle" to "clean transportation zone" and to change the reference to the statutory definition from THSC, §394.010, to refer to THSC, §393.001.

§114.651, Applicability

The commission proposes to amend §114.651(a) to change the requirement that an eligible entity that will replace 20 or more diesel vehicles within a 12-month period with qualifying vehicles may apply for a grant to refer to replacement of 10 or more vehicles. Also, the reference to a "twelve-month" period is changed to refer to a "12-month" period.

The commission proposes to amend §114.651(b) to change the requirement that an application for a grant under the Texas Clean Fleet Program include 20 or more vehicles for replacement to require that the application include 10 or more vehicles for replacement.

§114.652, Qualifying Vehicles

The commission proposes to amend §114.652(a)(1) to add clarifying language to the provision that a qualifying purchase must be certified to current federal emissions standards. Under the proposed revision, a qualifying vehicle must be certified to "the appropriate" current federal emissions standards "as determined by the commission."

§114.653, Grant Eligibility

The commission proposes to amend §114.653(e) to change the provision that the executive director shall waive the requirements of §114.653(b)(1) on a finding of good cause, to state that the executive director may waive the requirements.

Subchapter K, Division 5: Texas Clean Fleet Program

§114.658, Implementation Schedule

The commission proposes to repeal §114.658 to remove the expiration date for this division.

Subchapter K, Division 6: Alternative Fueling Facilities Program

The commission proposes to repeal this division, §§114.660 - 114.662, as it is obsolete.

Subchapter K, Division 7: Texas Natural Gas Vehicle Grant Program

The commission proposes to repeal this division, §§114.670 - 114.672, as it is obsolete.

Subchapter K, Division 8: Drayage Truck Incentive Program

The commission proposes to amend the title of this division to "Seaport and Rail Yard Areas Emissions Reduction Program."

§114.680, Definitions

The commission proposes to amend the definition of "Cargo handling equipment" under §114.680(1) to insert the term "land-based" before the phrase "....equipment used at a seaport or rail yard...." The commission also proposes to add paragraph (6) to include a definition of "Repower" and to renumber the definition of "Seaport" from paragraph (6) to paragraph (7).

§114.681, Applicability

The commission proposes to amend §114.681 to change the reference from "Drayage Truck Incentive Program" to "Seaport or Rail Yard Areas Emissions Reduction Program."

§114.682, Eligible Vehicle Models

The commission proposes to amend §114.682(c) to remove the existing requirement that to be eligible for purchase a drayage truck must have an engine of model year

2010 or later and the drayage truck being replaced must have an engine of model year 2006 or earlier. In place of the existing language in subsection (c), the proposed amendment would add requirements that to be eligible for purchase under this program a drayage truck or cargo handling equipment must: be powered by an electric motor or contain an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission; and emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine on the truck or equipment being replaced.

The commission also proposes §114.682(d) to add requirements for engines or motors eligible for the repowering of a drayage truck or cargo handling equipment. The language would require that an engine or motor be powered by electricity or be an engine certified to the current federal emissions standards applicable to that type of engine and that the engine or motor emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine being replaced.

The commission proposes §114.682(e) to specify that, unless otherwise determined by the commission, the nitrogen oxides emissions rate of the engines replaced or purchased under this program be based on the emissions standard or family emissions limit of the engine or, for uncontrolled engines, a baseline emissions rate established by the commission.

The commission proposes to re-letter the existing §114.682(d) as proposed subsection (f) to account for the addition of subsections (d) and (e).

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are expected for the agency and no fiscal implications are expected for other state agencies or units of local government.

The proposed rules incorporate program changes as a result of the passage of SB 1731, 85th Texas Legislature, 2017. The proposed rulemaking would revise Chapter 114, Subchapter K, pertaining to rules for several programs established under the TERP. The rulemaking would also repeal rules under Subchapter K that are no longer required under changes made by SB 1731. The rulemaking only proposes changes required to be implemented as a result of the passage of SB 1731.

SB 1731 extended the expiration dates of the TERP programs. Instead of establishing specific new expiration dates, SB 1731 extended the programs until the last day of the state fiscal biennium during which the commission publishes in the *Texas Register* notification that the EPA has published in the *Federal Register* that areas in the state are designated attainment or unclassifiable/attainment for NAAQS for ozone, or the EPA has approved a redesignation substitute making a finding of attainment for the

area, and judicial reviews of the EPA actions and rules have been completed and upheld the findings or the limitations period to seek judicial review has expired.

SB 1731 also amended the criteria and processes for several of the TERP programs. Major changes made under SB 1731 are further explained.

The criteria for the DERIP under THSC, Chapter 386, Subchapter C, were amended to revise the definition of a small business and to specify that the small business incentives may be implemented through a separate small business grant program or as part of another grant program under Subchapter C. In addition, the requirement that the executive director shall waive certain eligibility requirements on a finding of good cause was changed to state that the executive director may waive the requirements.

The name of the DTIP under THSC, Chapter 386, Subchapter D-1, was changed to the Seaport and Rail Yard Areas Emissions Reduction Program. Program criteria were added to include cargo handling equipment and to include repowers as an eligible project category. The requirements pertaining to the model year and nitrogen oxides emissions rate of the old and new vehicle and engine were also amended.

The criteria for the TCSBP under THSC, Chapter 390, were amended to add replacement of an existing school bus with a new school bus as an eligible project category. Other amendments were made to the program requirements.

The definition of the "clean transportation triangle" in THSC, §394.010, was removed and a definition of the "clean transportation zone" was added to THSC, §393.001. The new clean transportation zone includes additional counties that were not part of the previous clean transportation triangle. The references to the clean transportation triangle in the special provisions under the TCFP requirements in THSC, Chapter 392, pertaining to vehicles used for agricultural product transportation were amended to refer to the clean transportation zone.

The provision under the TCFP that an eligible entity that will replace 20 or more diesel vehicles within a 12-month period with qualifying vehicles may apply for a grant was changed to refer to replacement of 10 or more vehicles. Also, the requirement under the TCFP that a grant application include the replacement of at least 20 vehicles was changed to require that at least 10 vehicles be included in the application. In addition, the provisions requiring that a vehicle qualifying for an incentive be certified to current federal emission standards was changed to require that the vehicle be certified to the appropriate current federal emissions standards as determined by the commission. In addition, the requirement that the executive director shall waive certain eligibility requirements on a finding of good cause was changed to state that the executive director may waive the requirements.

SB 1731 also removed the rulemaking requirements for the AFFP under THSC, Chapter 393, and the TNGVGP under THSC, Chapter 394. The rules for these programs only

outline some, and not all, possible prioritization criteria for selecting projects under those programs and do not include the more detailed program implementation processes and criteria. Because the rules are no longer required and because the prioritization criteria in the rules provide only general information and not specific direction on implementation of these programs, the rules are not needed in order to effectively implement the programs. Therefore, the commission proposes to repeal the AFFP program rules under §§114.660 - 114.662 and the TNGVGP rules under §§114.670 - 114.672.

The proposed rulemaking would amend the DERIP rules under Subchapter K, Division 3, §§114.620, 114.622, and 114.623. The definition of a "Small business" would be amended to change the requirement that in order to qualify as a small business a person may own no more than two vehicles, to require that a person own not more than five vehicles. The model-year requirements for at least one of the diesel vehicles or equipment owned by a person would also be removed, as well as a change to require that a person have owned the diesel vehicle or equipment for at least two years, instead of the current one-year requirement. Clarifying language would be added specifying that the small business incentives may be implemented through a separate small business grant program or through special consideration to small businesses when implementing another program established under Division 3. The requirement that the executive director shall waive certain eligibility requirements on a finding of

good cause would be changed to specify that the executive director may waive the eligibility requirements.

The proposed rulemaking would amend the TCSBP rules under Subchapter K, Division 4, §114.644, and would repeal §114.648. The proposed amendment to §114.644(d) would add a phrase to clarify that the existing requirement that a school bus proposed for retrofit be operated on a regular, daily route to and from a school would apply during the school year. The proposed amendment to §114.644(e) would remove the current requirement that a project that includes the replacement of equipment or a repower include the destruction of the old equipment or engine. In place of that requirement, the commission proposes to add more specific requirements for the school bus being purchased and the school bus being replaced. Under the proposed new requirements, the school bus being replaced would need to be a model year 2006 or earlier, have been owned and operated by the applicant for at least the preceding two years, be in good operating condition, and currently be used on a regular daily route to and from a school during the school year. The replacement school bus would need to be of the current model year or the year before the current model year, and the grant recipient would need to agree to own and operate the bus on a regular, daily route to and from a school during the school year for at least five years. In addition, the school bus being replaced would need to be rendered permanently inoperable or permanently removed from the state to a destination outside of the United States,

Canada, or the United Mexican States. The proposed rulemaking would also repeal §114.648, which established an expiration date for Division 4.

The proposed rulemaking would amend the TCFP rules under Subchapter K, Division 5, §§114.650 - 114.653, and would repeal §114.658. The references to the "clean transportation triangle" would be amended to refer to the "clean transportation zone" and the reference to the statutory definition under THSC, §394.010, would be amended to refer to THSC, §393.001. The provision that an eligible entity that will replace 20 or more on-road diesel vehicles within a 12-month period with qualifying vehicles may apply for a grant would be changed to refer to replacement of 10 or more vehicles. Also, the requirement that an application for a grant under the TCFP include replacement of at least 20 vehicles would be changed to require that an application include the replacement of at least 10 vehicles. The requirement that a qualifying purchase must be certified to current federal emissions standards would be changed to require that the purchase be certified to the appropriate current federal emissions standards as determined appropriate by the commission. The requirement that the executive director shall waive certain eligibility requirements on a finding of good cause would be changed to specify that the executive director may waive the eligibility requirements. The proposed rulemaking would also repeal §114.658, which established an expiration date for Division 4.

The proposed rulemaking would repeal the AFFP rules under Subchapter K, Division 6, and the TNGVGP rules under Subchapter K, Division 7.

The proposed rulemaking would amend the DTIP rules under Subchapter K, Division, 8, §§114.680 - 114.682. The title of Division 8 would be changed from "Drayage Truck Incentive Program" to "Seaport and Rail Yard Areas Emissions Reduction Program." References in the rules would also be amended to refer to the new program title. The definition of "Cargo handling equipment" would be amended to insert the term "land-based" in the reference to equipment used at a seaport or rail yard. A definition of "Repower" would be added. The requirements that the replacement drayage truck have an engine of model year 2010 or later and the drayage truck being replaced have an engine of model year 2006 or earlier would be removed and new requirements pertaining to the old and new drayage truck or cargo handling equipment would be added, including a requirement that the engine on the replacement drayage truck or cargo handling equipment emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine on the truck or equipment being replaced. New requirements would be added for the engines or motors eligible for the repowering of a drayage truck or cargo handling equipment. New criteria would be added to specify that, unless otherwise determined by the commission, the nitrogen oxides emissions rate of the engines replaced or purchased under the program would be based on the emissions standard or family emissions limit of the engine or, for uncontrolled engines, a baseline emissions rate established by the commission.

The proposed rules extend the expiration dates of the TERP programs and also amend the criteria and processes for several of the TERP programs. No significant fiscal implications are expected for the agency and no fiscal implications are expected for other state agencies or units of local government unless they apply for and receive a grant. Grant application is voluntary. Only those governmental entities that own heavy-duty on-road vehicles, school buses, non-road equipment, marine vessels, locomotives, or stationary equipment and that apply for and receive a grant would be required to comply with the conditions of a grant contract. The proposed rules could result in cost savings for governmental entities who apply for and receive a grant as a percentage of the costs to replace or upgrade vehicles or equipment would be covered by the grant. It is not known how many local governments would apply.

Public Benefits and Costs to Business and Individuals

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be an improvement in air quality in the state's nonattainment areas and other areas of the state where the grant programs are eligible. Also, the rulemaking for the TCSBP will benefit school children in the state by enhancing the existing program to reduce the pollutant concentrations in diesel exhaust.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rules. The proposed rules relate to voluntary incentive programs. Only those entities that own heavy-duty on-road vehicles, non-road equipment, marine vessels, locomotives, or stationary equipment and that apply for and receive a grant would be required to then comply with the conditions of the grant contract.

The proposed rules could result in cost savings for businesses or individuals who apply for and receive a grant as a percentage of the costs to replace or upgrade vehicles or equipment would be covered by the grant. Grant recipients may also experience cost savings from lower fuel and maintenance costs associated with operating newer or upgraded vehicles or equipment.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect a rural community in a material way for the first five

years that the proposed rules are in effect. These statewide rules will not affect rural communities in any way different from non-rural communities. These rules involve voluntary grant programs. No direct impact on rural communities will occur as a result of the proposed rulemaking except to the extent an entity in that community applies for and receives a grant.

Small and Micro-Business Impact Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. The proposed rules involve voluntary grant programs. No direct impact on small or micro-businesses will occur as a result of the proposed rulemaking except to the extent a small or micro-business applies for and receives a grant.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect small or micro-businesses for the first five-year period the proposed rules are in effect.

Government Growth Impact Statement Assessment

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rule does not create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; or expand, limit, or repeal an existing regulation (The proposed rules do amend the criteria and processes for several of the TERP programs and also would repeal rules under Subchapter K that are no longer required under changes made by SB 1731). The proposed rulemaking does not increase or decrease the number of individuals subject to the rule's applicability, though in some cases more entities may be able to apply for and receive grant funding if they choose to do so. Any impact to the growth of government is a result of the passage of SB 1731 and not of this rulemaking. The rulemaking only proposes changes required to be implemented as a result of the passage of SB 1731.

During the first five years that the proposed rules would be in effect, it is anticipated that there will be a positive impact on the state's economy. The purpose of the programs under these rules is to help maintain and improve air quality in the state's nonattainment areas and other areas of the state where the grant programs are eligible. Also, the rulemaking for the TCSBP will benefit school children in the state by enhancing the existing program to reduce the pollutant concentrations in diesel exhaust.

Helping areas in the state designated nonattainment under the Federal Clean Air Act to reduce pollutant levels below the required federal NAAQS, as well as helping to keep areas from being designated nonattainment, will have a positive impact on the state's economy. The nonattainment designation could have a negative effect on economic growth in a designated area because of additional required controls and impacts on certain industries, businesses, and transportation projects.

In addition, maintaining or improving the quality of life in the state can be expected to further encourage economic growth as many businesses and industries make location decisions based, in part, on the ability to attract qualified employees. Quality of life in the area is one of the factors considered by businesses with making those decisions.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed

rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The amended Chapter 114 rules are proposed in accordance with SB 1731, 85th Texas Legislature, 2017, which amended THSC, Chapter 386, Subchapter C and Subchapter D-1 and THSC, Chapters 390 and 392 - 394. The proposed rules add or revise guidelines for a voluntary grant. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Written comments on the draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real

property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapters 386, 390 and 392 - 394, as a result of SB 1731, 85th Texas Legislature, 2017. The rules make revisions to a voluntary program and only affect motor vehicles that are not considered to be private real property. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking for Chapter 114 does not impact any CMP goals or policies because it revises a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 11, 2017, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted

during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2017-031-114-AI. The comment period closes on December 22, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

**DIVISION 3: DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD
AND NON-ROAD VEHICLES**

§§114.620, 114.622, 114.623

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The amendments are proposed as part of the implementation of THSC, Chapter 386, Subchapter C, as amended by SB 1731, 85th Texas Legislature, 2017.

§114.620. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cost-effectiveness--The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(2) Guidelines--*Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) adopted by the commission under Texas Health and Safety Code, §386.053, as amended.

(3) Incremental cost--The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business and may include added lease or fuel costs as well as additional capital costs.

(4) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(5) Non-road diesel--A vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including: non-road non-recreational equipment and vehicles; construction equipment; locomotives; marine vessels; and other high-emitting diesel engine categories.

(6) Non-road engine--An internal combustion engine that is in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment that is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

(7) On-road diesel--An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.

(8) Qualifying fuel--Any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(9) Repower--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(10) Retrofit--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

(11) Small business--A business owned by a person who:

(A) owns and operates not more than five [two] vehicles, one of which is:

(i) an on-road diesel [with a pre-1994 engine model]; or

(ii) a non-road diesel [with an engine with uncontrolled emissions]; and

(B) has owned the on-road or non-road diesel for more than two years [one year].

(12) Stationary engine--A machine used in non-mobile applications that converts fuel into mechanical motion, including turbines and other internal combustion devices.

§114.622. Incentive Program Requirements.

(a) Eligible projects include:

- (1) purchase or lease of on-road and non-road diesels;
- (2) emissions-reducing retrofit projects for on-road or non-road diesels;
- (3) emissions-reducing repower projects for on-road or non-road diesels;
- (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides (NO_x) emissions;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects;

(8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and

(9) other projects that have the potential to reduce anticipated NO_x emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, a project involving non-road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow

vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed motor vehicle replacement, purchase, or lease project, the period used to determine the emissions reductions and cost-effectiveness of each replacement, purchase, or lease activity included in the project must extend for five years or more, or 400,000 miles, whichever occurs earlier. Not less than 75% of the vehicle miles traveled projected for the period used to determine the emissions reductions must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside of a nonattainment county or affected county to count towards the percentage of use requirement.

(d) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the State of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the State of Texas.

(e) For a proposed project to replace a motor vehicle, the vehicle and engine must be decommissioned by crushing the vehicle and engine, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle and engine from operation in this state. For a proposed project to repower a motor vehicle, the engine being replaced must be decommissioned in a manner consistent with the requirements for decommissioning an engine as part of a vehicle replacement project. The executive director shall allow an applicant for a motor vehicle replacement or repower project to propose an alternative method for complying with the requirements of this subsection.

(f) For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) The commission may set cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO_x emissions in relation to the funds to be awarded.

(h) The executive director may [shall] waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a waiver of any ownership and use requirements established for replacement of a motor vehicle for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

(i) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(j) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state

or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO_x emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(l) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(m) Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), apply to the Texas Emissions Reduction Plan program. Notwithstanding the provisions of this chapter, as authorized under Texas

Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

§114.623. Small Business Incentives.

(a) This section establishes a process to provide fast and simple access to grants for small businesses, either through a separate small business grant program or through special consideration to small businesses when implementing another program established under this division, in accordance with Texas Health and Safety Code, §386.116, as amended.

(b) The grant process for a small business may include:

(1) a simplified grant application and other forms;

(2) pre-approval or pre-authorization of certain types of grant purchases and expenses;

(3) a simplified expense reimbursement process, which may include procedures for the grant recipient to assign grant payments directly to the vendor; and

(4) promotional activities and instructional materials targeted at small businesses to encourage them to participate in the program and to inform them of how to access the grants.

(c) The commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) shall include details to implement methods identified in subsection (b) of this section.

(d) Other methods for providing fast and simple access to grants for small businesses may be developed through guidelines.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 4: TEXAS CLEAN SCHOOL BUS PROGRAM

§114.644

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 390, which establishes the Texas Clean School Bus Program.

The amendment is proposed as part of the implementation of THSC, Chapter 390, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

§114.644. Clean School Bus Program Requirements.

(a) Eligible projects include:

- (1) diesel oxidation catalysts for school buses built before 1994;
- (2) diesel particulate filters for school buses built from 1994 to 1998;
- (3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;
- (4) the use of qualifying fuel; [and]
- (5) other technologies that the commission finds will bring about significant emissions reductions; and [.]
- (6) replacement of a pre-2007 model year school bus.

(b) The commission may limit funding under a particular funding round to certain areas of the state, types of applicants, and/or types of projects. The

commission may place a priority on funding for projects conducted in areas that do not attain certain national ambient air quality standards.

(c) Prior to each funding period, the commission may establish priorities and other criteria for reductions in diesel exhaust emissions to be achieved by projects funded during that period, including designation of additional pollutants to be addressed. A proposed project must achieve a reduction in emissions of diesel exhaust compared with the baseline emissions according to the percentage reduction level and other priorities established by the commission. The commission may also establish maximum levels for the funding awarded in relation to the emission reductions projected to be achieved by a project, in order to maximize the use of available funds.

(d) A school bus proposed for retrofit must be used on a regular, daily route to and from a school during the school year and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

(e) A school bus proposed for replacement must: [For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas.]

(1) be of model year 2006 or earlier;

(2) have been owned and operated by the applicant for at least two years before submission of the grant application;

(3) be in good operational condition; and

(4) be currently used on a regular, daily route to and from a school during the school year.

(f) A school bus proposed for purchase to replace a pre-2007 model year school bus must be of the current model year or the year before the current model year at the time of submission of the grant application.

(g) A school bus acquired to replace an existing school bus must be purchased and the grant recipient must agree to own and operate the school bus on a regular, daily route to and from a school during the school year for at least five years after a start date established by the commission, which will be based on the date the commission accepts documentation of the permanent destruction or permanent removal of the school bus being replaced.

(h) A school bus replaced under this program must be rendered permanently inoperable by crushing the bus, by making a hole in the engine block and permanently

destroying the frame of the bus, or by another method approved by the commission,
or be permanently removed from the state to a destination outside of the United
States, Canada, or the United Mexican States.

(i) [(f)] An application for a grant under this program is only eligible if it is made on the form provided by the commission and contains the information required by the commission.

(j) [(g)] A recipient of a grant under this division shall use the grant to pay incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

(k) [(h)] Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(l) [(i)] A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan

assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document or the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(m) [(j)] If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 4: TEXAS CLEAN SCHOOL BUS PROGRAM

[§114.648]

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repeal is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 390, which establishes the Texas Clean School Bus Program.

The repeal is proposed as part of the implementation of THSC, Chapter 390, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

[§114.648. Expiration.]

[This division expires August 31, 2019, unless the program is extended or reauthorized by the Texas Legislature.]

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 5: TEXAS CLEAN FLEET PROGRAM

§§114.650 - 114.653

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 392, which establishes the Texas Clean Fleet Program.

The amendments are proposed as part of the implementation of THSC, Chapter 392, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

§114.650. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural product transportation--The transportation of a raw agricultural product from the place of production using a heavy-duty on-road vehicle to:

(A) a nonattainment area;

(B) an affected county as defined under Texas Health and Safety Code (THSC), §386.001;

(C) a destination inside the clean transportation zone [triangle] established under THSC, §393.001 [§394.010]; or

(D) a county adjacent to a county described by subparagraph (B) of this paragraph or that contains an area described by subparagraph (A) or (C) of this paragraph.

(2) Alternative fuel--A fuel, other than gasoline or diesel fuel. When used in this division, this definition is limited to the following: electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85% methanol by volume.

(3) Eligible entity--Any person or entity with a fleet of 75 or more vehicles that:

(A) are registered in Texas; and

(B) include at least 10 [20] vehicles that are eligible for replacement.

(4) Golf cart--A motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(5) Heavy-duty vehicle--A motor vehicle with a gross vehicle weight rating greater than 8,500 pounds and containing an engine certified to the United States Environmental Protection Agency's heavy-duty engine standards.

(6) Hybrid vehicle--A motor vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(7) Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds and certified to the United States Environmental Protection Agency's light-duty vehicle emission standards.

(8) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(9) Neighborhood electric vehicle--A motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 Code of Federal Regulations §571.500);

(B) is a slow-moving vehicle, as defined by Texas Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds; and

(F) is not a golf cart.

(10) Program--The Texas Clean Fleet Program established under this division.

§114.651. Applicability.

(a) Any eligible entity that will replace 10 [20] or more on-road diesel vehicles within a 12-month [twelve-month] period with qualifying vehicles may apply for a grant under the Texas Clean Fleet Program to offset the cost of replacing those vehicles with alternative fuel or hybrid vehicles.

(b) Notwithstanding subsection (a) of this section, an entity that submits a grant application for 10 [20] or more qualifying vehicles is eligible to participate in the program even if the commission denies approval for one or more of the vehicles during the application process.

(c) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

§114.652. Qualifying Vehicles.

(a) A qualifying vehicle is one that:

(1) is certified to the appropriate current federal emissions standards as determined by the commission;

(2) replaces a diesel-powered on-road vehicle of the same weight classification and use; and

(3) is a hybrid vehicle or fueled by an alternative fuel.

(b) As a condition of receiving a grant the qualifying vehicle must be continuously owned, registered, and operated in Texas by the grant recipient until the earlier of the fifth anniversary of the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement.

(c) A vehicle is not a qualifying vehicle if it:

(1) is a neighborhood electric vehicle;

(2) has been used as a qualifying vehicle to qualify for a grant under this division for a previous reporting period or by another entity; or

(3) has qualified for a similar grant or tax credit in another jurisdiction.

§114.653. Grant Eligibility.

(a) To be eligible for a grant under the program a project must result in nitrogen oxide emission reductions of at least 25%, based on:

(1) the baseline emission level set by the executive director; and

(2) the certified emission rate of the new vehicle or engine.

(b) The vehicle being replaced must:

(1) be an on-road vehicle that has been owned, leased, or otherwise commercially financed, and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(2) satisfy any minimum average annual mileage or fuel usage requirements established by the executive director;

(3) satisfy any minimum percentage of annual usage requirements established by the executive director; and

(4) be in operating condition with at least two years of remaining useful life, as determined in accordance with criteria established by the executive director.

(c) At the discretion of the executive director, projects that result in a 25% reduction in other pollutants may be considered eligible for funding under this program.

(d) The executive director may establish additional criteria for purposes of prioritizing projects for selection. Such criteria may include, but are not limited to:

(1) nonattainment status of the primary location in which the eligible vehicles are used; or

(2) cost per ton benefits of the overall emissions being reduced.

(e) The executive director may [shall] waive the requirements of subsection (b)(1) of this section on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

(f) In establishing more specific requirements or additional criteria, as authorized under this section, for projects related to agricultural product transportation, the executive director shall use as a determining factor for eligibility for participation in the program established under this division the overall accumulative net reduction in nitrogen oxide emissions in a nonattainment area, an affected county, or the clean transportation zone [triangle].

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 5: TEXAS CLEAN FLEET PROGRAM

[§114.658]

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repeal is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan, and THSC, Chapter 392, which establishes the Texas Clean Fleet Program.

The repeal is proposed as part of the implementation of THSC, Chapter 392, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

[§114.658. Implementation Schedule.]

[This division expires on August 31, 2017.]

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

[DIVISION 6: ALTERNATIVE FUELING FACILITIES PROGRAM]

[§§114.660 - 114.662]

Statutory Authority

The repealed rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repealed rules are proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 393, which establishes the Alternative Fueling Facilities Program.

The repealed rules are proposed as part of the implementation of THSC, Chapter 393, Subchapter D, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

[§114.660. Purpose.]

[(a) These rules establish the criteria that the executive director may use for prioritizing facilities eligible to receive grants under the Alternative Fueling Facilities Program, established under Texas Health and Safety Code, Chapter 393.]

[(b) The requirements of Texas Health and Safety Code, Chapter 393, apply to grants awarded under this program.]

[§114.661. Criteria for Prioritizing Facilities Eligible to Receive a Grant.]

[(a) Prior to each grant application period, the executive director will establish specific priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:]

[(1) the need for reductions in nitrogen oxides (NO_x) or other pollutants of concern in the area where the facility will be located in order to meet or maintain federal air quality standards;]

[(2) the type of alternative fuel and the vehicles or equipment that will use the fuel;]

[(3) the potential for the project to increase the use of the alternative fuel in nonattainment areas and Texas in general;]

[(4) the potential for the project to increase the use of alternative fuels and alternative fuel technologies produced, manufactured, or otherwise based in Texas;]

[(5) the need for the facility, based on the current and expected number of vehicles and equipment that would be served by the facility or the fuel made available as a result of the facility, and the availability of other sources of the alternative fuel in the area;]

[(6) the expected use of the facility for fueling vehicles funded under local, state, or federal incentive programs, including the programs implemented under the Texas Emissions Reduction Plan;]

[(7) the location of the proposed facility in relation to major highways and transportation routes and the ease of access to the facility for use by the public;]

[(8) the location of the proposed facility in relation to an area where increased vehicle traffic would not be expected to contribute to traffic congestion,

reduce or negatively impact access to the area, or negatively impact the region's air quality or sensitive receptors;]

[(9) the percentage of costs of the facility to be paid by the applicant and other sources of funding;]

[(10) the commitment by the applicant to operating the facility over a period of time;]

[(11) consideration of technical and economic factors associated with a project; and]

[(12) the experience of the applicant in developing and operating the type of project proposed.]

[(b) The executive director may establish additional criteria for the award of a grant, including establishing certain operational, maintenance, and reporting requirements.]

[(c) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.]

[§114.662. Implementation Schedule.]

[This division expires on August 31, 2018.]

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

[DIVISION 7: TEXAS NATURAL GAS VEHICLE GRANT PROGRAM]

[§§114.670 - 114.672]

Statutory Authority

The repealed rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repealed rules are proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 394, which establishes the Texas Natural Gas Vehicle Grant Program.

The repealed rules are proposed as part of the implementation of THSC, Chapter 394, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

[§114.670. Purpose.]

[(a) These rules establish the criteria that the executive director may use for prioritizing qualifying vehicles eligible to receive grants under the Texas Natural Gas Vehicle Grant Program, established under Texas Health and Safety Code, Chapter 394.]

[(b) The requirements of Texas Health and Safety Code, Chapter 394, apply to grants awarded under this program.]

[§114.671. Criteria for Prioritizing Vehicles eligible to Receive a Grant.]

[(a) Prior to each grant application period, the executive director will establish priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:]

[(1) the potential for different types of projects to achieve reductions in nitrogen oxides (NO_x) and/or other pollutants of concern over the required period of use of the grant-funded vehicles, including consideration of the vehicle types, weight categories, and types of use with the greatest potential to achieve emissions reductions;]

[(2) the cost-effectiveness of potential projects, as determined by the cost per ton of expected reductions in NO_x and/or other pollutants of concern;]

[(3) the potential for different types of projects to help increase the use of natural gas for transportation in Texas;]

[(4) the areas of use of the grant-funded vehicles, including consideration of the availability of fuel and fueling infrastructure, the need for vehicle fleets to support fueling infrastructure, and the need for emissions reductions in those areas in order to meet federal air quality standards;]

[(5) support for conversion of large regional vehicle fleets moving goods and materials along interstate highways connecting the cities of Houston, San Antonio, Dallas, and Fort Worth from gasoline or diesel fuel to natural gas;]

[(6) support for projects to reduce exposure of vulnerable populations to pollutants of concern, including conversion of school bus fleets and other fleets transporting children or the elderly from gasoline or diesel fuel to natural gas;]

[(7) support for conversion of public transportation fleets, such as school buses, transit buses, airport shuttle buses, and similar vehicle fleets from gasoline or diesel fuel to natural gas;]

[(8) support for conversion of public utility and service fleets, such as refuse vehicles, maintenance and utility vehicles, and similar fleets from gasoline or diesel fuel to natural gas;]

[(9) support for the use of natural gas and natural gas vehicles, engines, and associated technologies produced, manufactured, or otherwise based in Texas; and]

[(10) support for implementation of new and innovative natural gas vehicle and engine technologies.]

[(b) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.]

[(c) Not less than 60% of the total amount of grants awarded in a fiscal biennium must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. However, this restriction does not apply if the commission does not receive enough grant applications to satisfy the percentage of funding requirement.]

[\$114.672. Implementation Schedule.]

[This division expires on August 31, 2017.]

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 8: SEAPORT AND RAIL YARD AREAS EMISSIONS REDUCTION PROGRAM

[DRAYAGE TRUCK INCENTIVE PROGRAM]

§§114.680 - 114.682

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan program.

The amendments are proposed as part of the implementation of THSC, Chapter 386, Subchapter D, established by Senate Bill 1731, 85th Texas Legislature, 2017.

§114.680. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Cargo handling equipment--Any heavy-duty non-road, self-propelled vehicle or land-based equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. Equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

(2) Drayage activities--The transport of cargo, such as containerized, bulk, or break-bulk goods.

(3) Drayage truck--A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard

for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(4) Non-road yard truck--A non-road mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

(5) Rail yard--A rail facility where cargo is routinely transferred from drayage truck to train or vice-versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

(6) Repower--To replace an old engine powering a vehicle with a new engine, a used engine, or a remanufactured engine, or electric motors, drives, or fuel cells.

(7) [(6)] Seaport--Publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels or barges to shore or vice-versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments. A seaport also includes publically or privately owned property within a ship channel security district established under Texas Water Code, Chapter 68.

§114.681. Applicability.

The provisions of §114.680 and §114.682 of this title (relating to Definitions and Eligible Vehicle Models) apply to the Seaport and Rail Yard Areas Emissions Reduction Program [Drayage Truck Incentive Program] established and implemented under Texas Health and Safety Code, Chapter 386, Subchapter D-1.

§114.682. Eligible Vehicle Models.

(a) Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) over 26,000 pounds;

(2) a non-road yard truck; and

(3) other cargo handling equipment.

(b) Models of existing drayage trucks eligible for replacement or repower under the program include:

(1) a heavy-duty on-road vehicle with a GVWR over 26,000 pounds;

(2) a non-road yard truck; and

(3) other cargo handling equipment.

(c) To be eligible for purchase under this program a drayage truck or cargo handling equipment must: [To be eligible for purchase under the program a drayage truck must have an engine of model year 2010 or later as specified by the agency in the grant solicitation materials and the drayage truck being replaced must have an engine of model year 2006 or earlier.]

(1) be powered by an electric motor or contain an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission; and

(2) emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine on the truck or equipment being replaced.

(d) To be eligible for purchase under the program an engine or motor repowering a drayage truck or cargo handling equipment must:

(1) be powered by electricity or be an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission; and

(2) emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine being replaced.

(e) Unless otherwise determined by the commission, the nitrogen oxides emissions rate of engines replaced or purchased under this program will be based on the emissions standard or family emissions limit to which the engine is certified or, for replacement of an uncontrolled engine, a baseline emissions rate established by the commission.

(f) [(d)] The executive director may place additional limits on vehicle models and engine model years eligible for purchase and replacement under the program for a particular grant round in order to improve the effectiveness and further the goals of the program.